

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LARRY DUNBAR Sr.,

Plaintiff,

v.

STATE OF WASHINGTON *et al.*,

Defendants,

Case No. C05-5491RBL

REPORT AND
RECOMMENDATION

**NOTED FOR:
September 30th, 2005**

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. Plaintiff is proceeding *in forma pauperis*. (Dkt. 5).

Plaintiff challenges his current criminal sentence in this action by asking that he be released from custody. (Dkt. # 6). He claims the state has not fulfilled its end of the plea agreement and under his interpretation of the agreement he is now entitled to release from custody. (Dkt. # 6). When a person confined by the state is challenging the very fact or duration of his physical imprisonment, and the relief he seeks will determine that he is or was entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Heck v. Humphrey, 114 S.Ct. 2364, 2373 (1994). Plaintiff is filing a collateral challenge to the legality of his continued confinement in this action and this action must proceed by way of habeas corpus.

CONCLUSION

This action relates to the propriety of current confinement. For the reasons stated above the action should be **DISMISSED WITHOUT PREJUDICE** prior to service. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **September 30th, 2005**, as noted in the caption.

DATED this 6th, day of September, 2005.

/s/ J. Kelley Arnold
J. Kelley Arnold
United States Magistrate Judge